

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking)
and Insurance to Fine Freelancers Consumer) CONSENT ORDER
Operated and Oriented Program of New Jersey, Inc.)

TO: Freelancers Consumer Operated and Oriented Program of New Jersey, Inc.
570 Broadway, Suite 1100
Newark, NJ 07102

This matter having been opened by the Commissioner of the Department of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Freelancers Consumer Operated and Oriented Program of New Jersey, Inc. ("Freelancers"), doing business as Health Republic Insurance of New Jersey, has violated provisions of the laws of the State of New Jersey; and

WHEREAS, Freelancers is a domestic insurance company authorized to transact business in New Jersey pursuant to N.J.S.A. 17B:18-42 since May 1, 2013; and

WHEREAS, N.J.A.C. 11:22-5.9(b)3 requires that the most preferred tier of a drug formulary, i.e. the tier with the lowest cost sharing, include more than one drug to treat each covered disease state where more than one drug is available; and

WHEREAS, N.J.A.C. 11:22-5.5(a) caps copayments for specified network services such as primary care and specialist physician visits and provides that for services not specified, the network copayment must be determined so that the carrier insures 50% or more of the aggregate risk for the service or supply to which the copayment is applied; and

WHEREAS, N.J.S.A. 26:2S-4 provides that a carrier shall disclose in writing to a subscriber, at the time of enrollment, among other things, a description of the covered services and benefits to which the subscriber or other covered person is entitled, the restrictions or limitations on covered services and benefits, the financial responsibility of the covered person, including copayment and deductibles, prior authorization and any other review requirements with respect to accessing covered services, where and in what manner covered services may be obtained, the covered person's right to appeal and the procedure for initiating an appeal of a utilization management decision made by or on behalf of the carrier with respect to the denial, reduction or termination of a health care benefit or the denial of payment for a health care service, and the procedure to initiate an appeal through the Independent Health Care Appeals Program; and

WHEREAS, N.J.A.C. 11:24A-2.3 provides that carriers shall provide to each subscriber within no more than 30 days following the effective date of coverage, through a handbook, certificate or other evidence of coverage, information describing, among other things, the covered services under the policy or contract including all exclusions, limitations, restrictions on accessing covered services such as prior authorization, preadmission certification and periodic review of ongoing treatment, a full and clear description of the carrier's policies and procedures for the provision of emergency and urgent care services, all dollar, day, visit or procedure limits and the method of exchanging inpatient for outpatient services, the responsibility of the covered person to pay deductibles, coinsurance or copayment as appropriate, and where and in what manner covered services can be obtained; and

WHEREAS, N.J.A.C. 11:4-37.3(b)3 provides that a carrier shall provide each covered person with a current evidence of coverage within 30 days of enrollment and no later than 30 days after any policy or contract changes; and

WHEREAS, N.J.A.C. 11:22-3.3(c) specifies that the paper standard format for the standard health care enrollment form for health insurance coverage can be accessed at <http://www.state.nj.us/dobi/formlist.htm#insuranceformsandapps>; and

WHEREAS, the standard health care enrollment form includes item C. Plan Option and instructs carriers to include information regarding pediatric dental coverage in this section; and

IT APPEARING, that specialty drugs include high cost drugs that require unique handling and/or patient education and which may be the only drugs to treat particular diseases, such as hemophilia and growth hormone deficiency; and

IT FURTHER APPEARING, that Freelancers placed all specialty drugs in its least preferred drug tier from January 1, 2014 to April 1, 2015; and

IT FURTHER APPEARING, that the placement of all specialty drugs in the least preferred drug tier means that no drugs were available for certain diseases in the most preferred tier contrary to N.J.A.C. 11:22-5.9(b)3; and

IT FURTHER APPEARING, that to correct this violation, Freelancers has voluntarily and temporarily moved all specialty drugs to Tier 1, eliminated Tier 4, revised the summary of benefits and coverage and policy form documents to eliminate Tier 4 cost sharing and reprocessed 145 specialty drug claims to pay at Tier 1 cost sharing, resulting in additional payments totaling \$136,367; and

IT FURTHER APPEARING, that Freelancers did not adjust the plan and benefits template used on federally facilitated marketplace to describe its change in cost sharing for

specialty drugs and incorrectly specified unapproved cost sharing for certain behavioral health and substance abuse services; and

IT FURTHER APPEARING, that Freelancers issued plans with \$75 copayments for outpatient mental health/substance abuse treatment and \$50 and \$75 copayments for therapeutic manipulation, which copayments did not satisfy the 50% test at N.J.A.C. 11:22-5.5(a); and

IT FURTHER APPEARING, that Freelancers has reduced the therapeutic manipulation copayment to \$35 and the outpatient mental health/substance abuse copayment to \$50 and has reprocessed 368 claims for outpatient mental health/substance abuse treatment and therapeutic manipulation, resulting in additional payments totaling \$6,990; and

IT FURTHER APPEARING, that Freelancers is revising the Summary of Benefits and Coverage, other marketing materials and the policy forms to specify the corrected copayment amounts; and

IT FURTHER APPEARING, that, from January to August 2015, Freelancers failed to issue individual health benefit plans contracts, small employer health benefit plan contracts and small employer health benefit plan certificates to individual and groups covered under such plans that are compliant with the terms of the standard plans of the Individual Health Coverage ("IHC") and Small Employer Health ("SEH") programs and that accurately reflect the terms of the health benefit plans, contrary to N.J.S.A. 26:28-4, N.J.A.C. 11:24A-2.3 and N.J.A.C. 11:4-37.3(b)3; and

IT FURTHER APPEARING, that Freelancers has not provided the 96-hour supply of prescription drugs that require prior approval but for which prior approval had not been secured, as required by the IHC and SEH standard forms; and

IT FURTHER APPEARING, that Freelancers advises that the 96-hour supply of prescription drugs that require prior approval but for which prior approval has not been secured is being provided as of June 5, 2015; and

IT FURTHER APPEARING, that Freelancers has identified the members who may have been harmed by the failure to dispense a 96-hour supply and the scope of appropriate remediation, and has been working with the Department to effect that remediation; and

IT FURTHER APPEARING, that the nongroup enrollment form used by Freelancers does not include information regarding pediatric dental coverage in item C. or elsewhere on the form, that Freelancers advised the Department by letter dated July 31, 2015, that it would revise the nongroup enrollment form to capture information regarding pediatric dental coverage and submit the revised form to the Department prior to implementation, and that Freelancers submitted the revised form to the Department on August 28, 2015; and

IT FURTHER APPEARING, that Freelancers asserts that the violations set forth above were not intentional or intended to mislead the Department or the public; and

IF FURTHER APPEARING, that Freelancers has cooperated in the Department's investigation of these violations; and

IT FURTHER APPEARING, that this matter should be resolved upon the consent of the parties to these proceedings without resort to a formal hearing, and further good cause appearing;

NOW, THEREFORE, IT IS on the 17th day of September, 2015:

ORDERED AND AGREED, that Freelancers will pay a fine in the amount of four hundred fifty thousand dollars (\$450,000) in four installments, with an initial payment of one hundred fifty thousand dollars (\$150,000) due on execution of this consent order by the company and with three subsequent payments of one hundred thousand dollars (\$100,000) each due on

October 15, November 15 and December 15, 2015. The payments shall be made through certified check, attorney trust account check, money order or electronic funds transfer made payment of "State of New Jersey – General Treasury"; and

IT IS FURTHER ORDERED AND AGREED, that the signed Consent Order together with the initial payment of \$150,000 shall be sent to Gale Simon, Assistant Commissioner, Department of Banking and Insurance, 20 West State Street, P. O. Box 329, Trenton, NJ 08625-0329; and

IT IS FURTHER ORDERED AND AGREED, that Freelancers will continue to institute measures and monitor operations in order to obtain and/or maintain compliance with all Department statutes and regulations; and

IT IS FURTHER ORDERED AND AGREED, that in the event full payment of the fine is not made in accordance with this Order, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties in summary proceedings, in accordance with the penalty enforcement law, N.J.S.A. 2A:58-10 et seq.; and

IT IS FURTHER ORDERED AND AGREED, that the provisions of this Consent Order represent a final agency decision and constitute a full and final resolution of the matters addressed herein.



Peter L. Hart
Director of Insurance

Consented as to Form, Content and Entry:



Freelancers Consumer Operated and
Oriented Program of New Jersey, Inc.
Name: *Rebecca Krampick*
Title: *Board Chair*

9-17-15

Date